2480.

SUPREME COURT OF THE UNITED STATES.

No. 136.

THE PHILADELPHIA, WILMINGTON AND BALTIMORE RAILROAD COMPANY, APPELLANTS,

vs.

THE PHILADELPHIA AND HAVRE DE GRACE STEAM TOW-BOAT COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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2481

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in November, in the year of our Lord one thousand eight hundred and fifty-seven.

Present, the Honorable R. B. Taney, Chief Justice of the Supreme Court of the United States; William F. Giles, judge of Maryland district; William M. Addison, esquire, attorney; John W. Watkins, esquire, marshal; Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

THE PHILADELPHIA, WILMINGTON and BALTIMORE RAILROAD COMPANY, Appellant,
vs.
THE PHILADELPHIA and HAVRE DE GRACE STEAM TOW-BOAT COMPANY, Appellee.

Be it remembered, that heretofore, to wit, on the 16th day of April, in the year of our Lord one thousand eight hundred and fifty-seven, the said Philadelphia, Wilmington and Baltimore Railroad Company, by William Schley and Thomas Donaldson, their proctors, filed in the circuit court here the transcript of a record from the district court of the United States in and for the Maryland district, in the words and of the tenor following, to wit:

Record.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a district court of the United States, in and for the Maryland district, begun and held at the city of Baltimore on the first Tuesday in December, in the year of our Lord one thousand eight hundred and fifty-six.

Present, the Honorable William F. Giles, judge of Maryland district; William M. Addison, esquire, attorney; John W. Watkins, esquire, marshal; Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

THE PHILADELPHIA and HAVRE DE GRACE STEAM TOW-BOAT COMPANY
vs.
THE PHILADELPHIA, WILMINGTON and BALTIMORE RAILROAD COMPANY.

Libel filed 24th November, 1856.

Libel.

In Admiralty.

To the Honorable William F. Giles, Judge of the District Court of the United States for the district of Maryland:

The Philadelphia and Havre de Grace Steam Tow-boat Company, a corporation created by the laws of the State of Pennsylvania, owners of the steamer Superior hereinafter mentioned, exhibits this their libel against the Philadelphia, Wilmington and Baltimore Railroad Company, a corporation created by the laws of the States of Pennsylvania, Delaware and Maryland, in a cause of collision, civil and maritime.

And thereupon the said tow-boat company doth allege, and articulately propound, as follows, to wit:

First. That the said steamer Superior is a vessel of more than twenty tons burthen, to wit, of the burthen of one hundred and ninety-four tons or thereabouts, and at the time when the cause of action hereinafter mentioned and set forth arose, was enrolled and licensed for the coasting trade, and was employed in the business of commerce and navigation between ports and places in different States and territories of the United States upon the navigable waters of the said United States.

Second. That the said railroad company is the owner of the line of railroad between Baltimore and Philadelphia, which line of railroad runs from the city of Baltimore to Havre de Grace, on the west branch of the Susquehanna river, and from the village of Perryville, on the east branch of said Susquehanna river, directly opposite to Havre de Grace, to the city of Philadelphia; the said Susquehanna river, for all that part of it lying between said Havre de Grace and said Perryville, and for several miles above, and especially at the place where the cause of action hereinafter mentioned arose, being within the ebb and flow of the tide, and within the admiralty and maritime jurisdiction of this honorable court.

That the said railroad company having projected the continuation of their said road across the said river by means of a bridge at or near the said points, Havre de Grace and Perryville, entered upon the construction of said bridge, and drove into the bottom of said river, in the channel way thereof for vessels navigating the same, one or more piles or logs of timber; and that afterwards, abandoning either temporarily or wholly their said purpose of building said bridge, they cut off the said piles below the water surface, so that they could not be seen, but not low enough to allow vessels navigating said river to pass over them.

Third. That on the eleventh day of May, in the year eighteen hundred and fifty-six, the aforesaid Superior, being tight, staunch, and well manned and provided, sailed from her wharf at the town of Havre de Grace, at the outlet of the tide-water canal, with a

number of canal boats in tow, on a voyage to Chesapeake city, in order to deliver said canal boats at the outlet lock of the Chesapeake and Delaware canal.

Fourth. That during the said voyage, to wit, on the said eleventh day of May, at or about five o'clock in the morning, the said steamer having rounded out from her said wharf into the river, and having got into the channel way thereof, and straightened out her fleet of boats in tow, was proceeding down the said channel on the true and proper course of her voyage, under her usual and proper head of steam, when she came into violent and forcible collision with one or more of the said piles so as aforesaid placed *in* the said railroad company, and by them cut off below the water, so as to be incapable of being seen and avoided. That the violence of the collision was so great as to make it apparent that some dangerous injury had resulted to the said steamer therefrom, and the captain of the said steamer found it necessary immediately to cast off the canal boats he had in tow, to back off from the said obstruction, and to head in and make for the shore with all practicable speed. That the said steamer, thus injured, reached her wharf, which she had but a short time before departed from, and cast a line ashore and made fast, when, owing to the water having made so rapidly in her hold, by reason of the said collision, and before any exertion could be made to prevent it, she sank to the bottom, and owing to the shelving character of the bottom she parted the line by which she was made fast to the wharf, and slid thirty or forty feet therefrom, where she remained stationary.

Fifth. That at the time of the collision aforesaid the said steamer Superior had a proper watch on deck; and if the said piles or pile had extended above the water, or had been indicated by proper buoys or other sufficient marks, the said steamer could have avoided them; but not being visible, or so indicated or marked, the said collision was inevitable.

Sixth. That at the time of the aforementioned collision and loss of the said steamer the libellants were the true and lawful owners of the said steamer, and that the said steamer, her furniture, tackle, and apparel were of the value of nine thousand five hundred dollars, and that by reason of the unlawful, careless, negligent, and improper conduct of the said railroad company, and of the collision occasioned thereby, as before mentioned, the libellants have sustained damages to the amount of twelve thousand dollars, or thereabouts, for which they claim reparation in this suit.

Seventh. That all and singular the premises are true; wherefore the libellants pray that process in due form of law may issue against the said Philadelphia, Wilmington and Baltimore Railroad Company, and that this honorable court will pronounce for the damages aforesaid, and decree the same to be paid with costs, and for

such other and further relief and redress in the premises as to right and justice may appertain, and the court is competent to give.

DOBBIN & TALBOTT,
Proctors for Libellants.

Attest: A. HORNER, [SEAL.]
Secretary.

Answer.

The answer of the Philadelphia, Wilmington and Baltimore Railroad Company, under its corporate seal, to the libel and complaint of the Philadelphia and Havre de Grace Steam Tow-Boat Company, in the district court of the United States in and for the district of Maryland, exhibited.

In Admiralty.

The said respondent in answer to the said libel, and to the several articles thereof, articulately answers and propounds as follows:

In answer to the first article of said libel this respondent answers and propounds, that it has no knowledge of the said several matters in said article alleged, and cannot, therefore, either admit or deny the same to be true.

Second. In answer to the second article the respondent answers and propounds, that it is the owner of a railroad from Baltimore to Havre de Grace, and from Perryville to Philadelphia, and that Havre de Grace and Perryville are on opposite sides of the Susquehanna river, the former being in Harford county, and the latter in Cecil county, and both in the State of Maryland; and that the connexion between Havre de Grace and Perryville is by means of a ferry-boat running across the Susquehanna river from one place to the other place and back again; and this respondent admits that the tide ebbs and flows there, and for several miles above, in the Susquehanna river, and at and above the point described in said libel, as the place where the alleged cause of action occurred. This respondent admits that by virtue of an act of assembly of Maryland, passed at January session, 1853, Chapter 138, the construction of a bridge across the Susquehanna river was commenced by certain parties, who had contracted with this respondent to do, execute and finish all the piling and lumber foundations of said bridge, and the said contracting parties, and their agents and workmen, did proceed to drive piles for the purpose of obtaining a foundation for such proposed bridge; but afterward, and before the time of the happening of the injury complained of in the said libel, the work of said construction was suspended, and still remains suspended, and this respondent believes and avers, and propounds, that for the purpose of removing all obstructions the piles which had been driven as aforesaid were intended to be sawed off level with the bot-

tom of the said river, and, as far as practicable, were so sawed off, and none were left, to the knowledge of the officers, agents, or servants of the respondent, in a condition or position to form any obstruction to navigation; and while this respondent does not admit it to be true that the injury of which the libellant complains was caused by any such pile or piles; yet if it shall be made to appear by proof, then this respondent will insist that the injurious position of such pile or piles must have been caused by the future action of the waters of said river after the said parties so contracting as aforesaid with this respondent, their agents and workmen, had left the same in a position in which, but for the disturbing effects of the waters of the river, they would have been entirely harmless thereafter.

Third. In answer to the third article this respondent believes it to be true that on the day propounded in said libel the said steamboat Superior sailed from the wharf at which she had been lying at Havre de Grace with canal boats in tow, on such voyage as in said article is mentioned, but it does not admit that said steamboat at that time was staunch, well manned, or well provided.

Fourth. In answer to the fourth article this respondent has no such knowledge, information, or belief, as would induce it to admit the allegations thereof to be true, and it requires the libellant to sustain the same by competent legal testimony.

Fifth. This respondent does not admit the allegations of the fifth article to be true, and requires the libellant to establish the same by competent legal proof.

Sixth. In answer to the sixth article this respondent says that it has no knowledge as to alleged ownership of said steamboat, but it denies that said steamboat was of the large value therein propounded, or that libellant sustained the large loss in said article alleged, or any considerable loss whatever.

Seventh. In answer to the seventh article this respondent says, that it does not admit the allegations of said libel, except in so far as hereinbefore expressly admitted to be true.

And by way of further defensive allegations this respondent alleges and propounds as follows:

Eighth. That on or about the ninth day of May, 1856, and prior to the occurrence of the damage complained of in said libel, the said steamboat Superior, whilst navigating the Chesapeake bay, and when east of a place called the Battery, was run upon a rock or stone by those having the management and control of said steamboat, by reason whereof a hole was made in her bottom, which caused her to leak very badly; that for the purpose of stopping said hole, the captain, or other person having charge of said steamboat, placed a flitch of bacon, or some other kind of bacon, in or across said hole, and a prop or shore was placed against said bacon for the purpose of keeping it in place; and that said steamboat was in

such condition when, on the day in that behalf mentioned in said libel, the said steamboat was moved from the wharf at Havre-de-Grace by those having charge and control of her at the time for the purpose of entering upon an intended voyage therefrom to Chesapeake City, in towing canal-boats from the outlet lock of the Tide Water canal at Havre de Grace to the Chesapeake and Delaware canal; that said steamboat was not, when she was so moved from the said wharf, for the purpose of entering upon the said intended voyage, tight, or staunch, or seaworthy, and more especially after lying for some time at said wharf, where said bacon was exposed, not merely to the action of the water, but also to the destructive attacks of the many eels which abound in that part of the Susquehanna river; that whilst this respondent has no such certain information as will enable it to aver positively that the said steamboat was actually leaking when moved as aforesaid from the said wharf, yet it feels justified in propounding as the fact that said steamboat was then in a leaking condition, and that if afterwards the said steamboat did come into collision with any pile or piles, (which this respondent, however, does not admit,) such collision was purely and exclusively the consequence of the leaking condition of said steamboat at the time, whereby she became heavy and was made to draw an unusual and extraordinary depth of water, and was thus brought into contact with the said pile or piles, whereas, but for the condition of said steamboat, she would have moved over and clear of said pile or piles, if any: so that, in fact and in truth, the damages alleged to have been sustained by the libellant was the consequence of the actual condition and unseaworthiness at that time of said steamboat.

Ninth. That the injury and damage alleged by the libellant to have been sustained by the said steamboat was the result of negligence, want of care, and recklessness on the part of the person or persons having charge and control at the time of said steamboat.

Tenth. That said injury or damage were not the result of any negligence, or want of care, or recklessness on the part of this respondent.

Eleventh. That the injury and damage really sustained by the said steamboat by reason of the collision, if any, with any pile or piles in the river, did not exceed twenty dollars; and the larger injury and damage, if any, were owing to the want of proper care and reasonable efforts on the part of those having control of said steamboat to extricate her in a proper and skilful manner from the peril of further injury and damage.

Twelfth. And by way of further defensive allegation, this respondent alleges and propounds that the day on which said steamboat was moved as aforesaid from the wharf for the purpose of entering on said intended voyage was Sunday; that the said wharf

was and is parcel of the territory of Harford county, in the State of Maryland, and that the Susquehanna river at that place is within the territorial limits and jurisdiction of said county; that the said steamboat was used and employed by her owner in the exclusive business of towing canal-boats as aforesaid; and that, when entering on said intended voyage, the said steamboat, and those who had the control and management thereof, were engaged in their usual and ordinary work and labor. And this respondent further alleges and propounds, that such use and employment by the owner of said steamboat, and such employment by the captain and crew of the said steamboat, the same not being a work of necessity or charity, was contrary to the laws of the State of Maryland, and punishable as such upon conviction. And so this respondent alleges and propounds that said steamboat and her officers and crew, at the time when the said alleged damage and injury were incurred, were employed, engaged, and occupied in an act prohibited by law and wholly illegal.

Thirteenth. And this respondent further alleges and propounds, that this respondent, previous to the driving of any piles in said river, did enter into an agreement with certain parties who contracted, for a certain stipulated compensation, to do, execute, and finish all the piling and timber foundations for the said respondent's proposed bridge; and all the piles driven in the said river for said purpose were driven by the said contracting parties and their agents and workmen, and not by the agents and workmen of this respondent; and although this respondent does not admit that any of said piles were carelessly or improperly driven, or that any of said piles were left in a position or condition to obstruct the navigation of said river, or that any injury therefrom occurred to the said libellant, yet if it shall be so made to appear, by proof, then this respondent will insist that this respndent is not liable for the acts or omissions of said contracting parties or their agents or workmen, or for the alleged injury suffered by the said libellant therefrom.

Fourteenth. And this respondent further alleges and propounds, that at the time of the said collision, this respondent was not, nor were any of the agents or officers of said respondent, engaged on the construction of said bridge across the Susquehanna river, or of any of the works or of any part of the said bridge.

Fifteenth. And this respondent is advised, and respectfully insists and propounds, that the remedy of the libellant, if any, is by suit in a court of law, and not by way of libel in a court of admiralty. Wherefore this respondent prays that said libel may be dismissed with costs, &c.

WILLIAM SCHLEY,
THOMAS DONALDSON,
Proctors for Respondent.

Decree.

In the District Court of the United States for the district of Maryland—December Term, 1856.

THE PHILADELPHIA AND HAVRE DE GRACE STEAM TOW-BOAT COMPANY
vs.
THE PHILADELPHIA, WILMINGTON, AND BALTIMORE RAILROAD COMPANY.

This cause standing ready for hearing, the libel, answer, proofs, and other proceedings in the cause, together with the arguments of the respective proctors, having been read, heard, and considered, it is thereupon, this fifth day of February, 1857, by me, William F. Giles, judge of the district court aforesaid, and by the authority of said court, adjudged, ordered, and decreed, that the objection to the jurisdiction of this court in the premises be, and the same is hereby, overruled; and that the respondents pay to the libellants the sum of seven thousand dollars, current money, for their damages by them incurred, as in their libel set forth, together with the costs of this proceeding to be taxed by the clerk.

WILLIAM F. GILES.

From which said decree, so as aforesaid passed, the said Philadelphia, Wilmington, and Baltimore Railroad Company, by its proctors, in open court here, prayed an appeal to the circuit court of the United States for the fourth circuit in and for the Maryland district, to be held at the city of Baltimore on the first Monday in April next, and to it it is granted.

And also the said Philadelphia and Havre de Grace Steam Tow-boat Company, by its proctors aforesaid, in open court here, in like manner, prayed an appeal to the said circuit court to be held at the city of Baltimore on the first Monday in April next, and to them it is granted.

Thereupon it is ordered by the court here that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said circuit court, and the same are hereby transmitted accordingly.

Appeal Bond.

Know all men by these presents, that we, Enoch Pratt and Henry Janes, of the city of Baltimore, Maryland, and Thomas Donaldson, of Howard county, of said State, are held and firmly bound unto the Philadelphia and Havre de Grace Steam Tow-boat Company, in the just and full sum of fourteen thousand dollars lawful money of the United States, to be paid to the said Philadelphia and Havre de Grace Steam Tow-boat Company, its certain attorney, successors or assigns, to which payment, well and truly to be made and done, we hereby bind ourselves, our heirs, executors and

administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this third day of April, in the year of our Lord one thousand eight hundred and fifty-seven. Whereas at a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore, on the first Tuesday in December, in the year of our Lord one thousand eight hundred and fifty-six, the said Philadelphia and Havre de Grace Steam Tow-boat Company, by the decree of the same court, recovered against the Philadelphia, Wilmington and Baltimore Railroad Company the sum of seven thousand dollars for their damages by them incurred, as in their libel set forth, together with the costs of the proceedings, from which said decree so as aforesaid passed the said Philadelphia, Wilmington and Baltimore Railroad Company hath prayed an appeal to the circuit court of the United States for the fourth circuit in and for the Maryland district, to be held at the city of Baltimore on the first Monday in April next: Now the condition of the above obligation is such, that if the said Philadelphia, Wilmington and Baltimore Railroad Company shall well and truly prosecute with effect its said appeal, and pay unto the said Philadelphia and Havre de Grace Steam Tow-boat Company, its attorney, successors or assigns, the amount of the said decree and costs adjudged unto it by the said district court, and also all such damages, costs and charges as may be awarded unto it by the said circuit court, in case the said appellant shall fail to make good its said appeal, then the above obligation to be void and of none effect, otherwise to be and remain in full force and virtue in law.

ENOCH PRATT, [SEAL.]
HENRY JANES, [SEAL.]
THOMAS DONALDSON. [SEAL.]

Signed, sealed and delivered in presence of—
ARNOLD S. HYDE.

Bond approved 4th April, 1857.

WILLIAM F. GILES.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the district court aforesaid, I hereunto subscribe my name and affix the [L. S.] seal of the said district court, this sixteenth day of April, in the year of our Lord one thousand eight hundred and fifty-seven.

THO. SPICER,
Cl'k Dis't Court.

In the Circuit Court.

Deposition of Albert Thatchery, witness for the appellant, taken before John Hanan, esquire, United States Commissioner for the district of Maryland, at the city of Baltimore, on the 31*st day of March,* 1857.

I am a ship-carpenter, and been engaged in that business since I have been out of my apprenticeship, which is 23 years, and have been engaged as proprietor of a yard 19 years at Wilmington, Delaware; I knew the steamboat Superior, belonging to the appellees; saw her after she had been sunk and raised; she was then lying at Havre de Grace; I visited her with Capt. Barr at his request, for the purpose of examining her, to ascertain her condition and value. The special object was to ascertain the extent of her damage by running against a pile, as was said. I went all round her on deck, and in the hold at both ends. The estimate of damage that I found was five hundred and fifty dollars; that was the amount I thought would put her in as good a condition as she was before she was sunk, and this was formed on her actual condition as she then appeared, having been sunk and raised. About ten years before, perhaps twelve years, I had seen this same steamboat Superior lying at the yard of Young & Moore, a company in Wilmington, Delaware, close by my ship-yard. Don't recollect if I was on board of her or not, but I was at the wharf and saw her frequently; I don't know where she was built, but have the impression she was built in New York. North river boats, in point of durability, are not equal to the Baltimore-built boats; their timbers are not so good. From my experience in overhauling boats, the North river boats decay sooner than southern-built boats; not because the workmanship is inferior, but because the materials do not last so long. Northern boats last from six to ten years before they seriously decay. The caulking is the same in both description of boats.

From my examination of the steamboat Superior, at the time I examined her at Havre de Grace, my estimate of her value, if she had been restored to the condition in which she was before she was injured, she would have been worth about thirty-five hundred dollars; this is my estimate of what she would have been worth after she had been repaired, and restored to the condition in which she was before the accident.

Cross-examined.

I do the principal work of the railroad company, and also have done work for the appellees.

Does not recollect to have ever been on board the Superior, except at the time I was on board with Capt. Barr, as before stated. Capt. Barr is the agent of the railroad company in connection with the boats. The boats from the North river, that I have had under my charge, were the "Balloon," the "Thomas Powell," the

"Zephyr," and the "St. Nicholas;" these are all that I now recollect. As far as my experience in Baltimore boats go, I have very little experience in new boats; I think the material used in the Baltimore boats is salt-water oak, which is better than fresh-water oak, which is used in the North river boats.

I can't tell as a general thing when Baltimore boats begin to decay, as I have not overhauled many of them, but can give particular instances of them as far as I have overhauled them.

From my experience, the relative value as to durability between a North river and a Baltimore-built boat is 15 per ct. in favor of the latter; this valuation refers to the value of the hull; as to the engines, I think the New York boats would be the best as a general thing.

Taking into view the entire boat, comprising joiner's work, engine, and hull, I should suppose the value of a New York and a Baltimore boat, when new, about equal.

I do not know whether these is timber carried from Chesapeake bay to New York; I get mine from Chesapeake bay, Delaware bay, and Susquehanna river.

In estimating the Superior at 3,500 dollars, I spoke of her value at public or private sale; I don't mean to say she was worth that; I mean to say she would not have brought more at public or private sale.

Question. Looking at the fact that this boat was engaged in a service to which she was adapted, do you think her value was no more than $3,500 to the company that owned her?

Answer. I can't see her valuation any more; that is what I would value her at, either at private or public sale.

ALBERT THATCHERY.

Deposition of John C. Thomas, witness for the Appellant, taken before the same Commissioner at the same time and place.

I am a ship-carpenter and connected with the establishment of Harlan & Hollingsworth, Wilmington, Delaware; have been engaged in that business about 17 years.

I know the steamboat Superior belonging to the appellees; saw her last in February, 1856; she was then lying at Havre de Grace; I went, with another, to do some work upon her, from the establishment of Harlan & Hollingsworth; supposes we put about $200 worth of repairs on her, including materials and workmanship; we caulked her outside, and caulked her forward deck all over; I consider myself competent, from the examination I made of her, to form an estimate of her value; I considered when I left her, after she was repaired, not to be worth more than 3,500 dollars; I should consider that her full value.

Cross-examined.

I am a journeyman ship-carpenter in the employment of Harlan

& Hollingsworth; I never owned a steamboat; I never bought or sold one.

Re-examined.

I have worked on a great many, a number of them, and consider myself competent to form a just estimate of their value.

JOHN C. THOMAS.

Deposition of Robert H. Barr, witness for the Appellant, taken before the same Commissioner on the first day of April, 1857.

I am acquainted with the steamboat Superior, and believe her value to have been before this accident from 2,500 to 3,000 dollars; I am now superintendent of the floating power of the appellants, and have been concerned with steamboats and vessels since the year 1806—at it all the time.

I am partially acquainted with the navigation of the Susquehanna river, opposite Havre de Grace and Cecil; I commanded the Maryland nine months, and was all over there in sounding to get a sight for the bridge; I had charge of the steamboat Susquehanna when the Maryland was put on the line; had charge of her I suppose for seven or eight months.

The proctor for appellant herewith files the annexed paper marked (Exhibit A.)

Question. Look at the map marked "Exhibit A," assuming that the steamer Superior in going down the river from the basin at the mouth of the canal struck upon some obstruction in the river from 60 to 100 feet above the point marked A, and was in consequence making water very rapidly; what would have been the proper course for the captain of the Superior to pursue?

Answer. The proper course to pursue would have been to run her on the flats that were most convenient to her, near where the accident occurred; that would have been on Watson's Island spit; that was the nearest and most available, as the boat's head canted towards that place when she struck, and was not more than one hundred yards off; I would have put her on the flats below the present dock where the company's steamboat now is, in the area C, B, D, as marked on the Exhibit A.

Question. Was there any reason for going to either of those flats rather than to the point E, being the wharf at the basin of the canal?

Answer. First, she could have got there much sooner than to her own wharf; she would not have had to round to; there was danger in rounding to, and she was water-logged; no current to stem, and shorter distance.

Question. State why you consider it a shorter distance to go to the flats C, B, D, than to the point E.

Answer. She would not have to round to, and she would have

some current with her; she would also have had the full power of her steam.

Question. Were there any advantages in going to either of the flats mentioned rather than to the wharf at E, in regard to the safety of the vessel?

Answer. Yes; if she had gone on the flats she could not have sunk; running her on the mud stopped the water from going into the hole; it would not be necessary to sling her to raise her; they could have pumped the water out of her and stopped the hole, and then she would have floated with the tide when it rose.

Question. Could she, or not, have been taken then with safety to a place where she could have been thoroughly repaired?

Answer. Yes, sir.

Question. Do you know of any vessels having been run on these flats, and were they a safe place for mooring vessels?

Answer. Yes, sir. I have seen many vessels on the flats, both sail vessels and steamboats. The Susquehanna, for one, was put there to keep her from sinking; also the Maryland has been on them, and I think the Superior was there one winter. I consider the flats perfectly safe for the mooring of vessels.

Question. What is the depth of water of point E on the Exhibit A?

Answer. I don't know exactly. I saw the Superior sunk there, and from the way she was submerged, I judge it was from ten to fifteen or twenty feet. I suppose in high water twenty feet.

Question. Suppose the Superior struck near the point A, and that she then turned and made for the wharf at E, and there were hawsers and chains on board the vessel, how should she have been made fast to that wharf when she arrived?

Answer. She ought to have been made fast with the best and strongest material she had. I should have taken the chain out first, and with a capstan or windlass, whichever she had, and have hove it as taught as I could heave it with the power of all the men. I should have made her fast, to prevent her slipping out, if there was any indication of it, with all the chains and ropes I had.

Question. Would you consider it safe or proper, if the vessel was making water rapidly, to rely on ropes alone if there were chains on board?

Answer. Not if I was acquainted with the fact that there was deeper water at the stern than at the bow.

Question. Does it shelve from the wharf E out?

Answer. I should think it did from the position of the Superior being more submerged at the stern than the bow.

Question. What would be the consequence of the vessel's remaining a longer or shorter time under water near the point E?

Answer. The longer she remained under water the more she

would suffer, from the action of the water, mud, and swelling of the sea.

Question. How long was the Superior under water?

Answer. I don't know.

Question. What was the effect on the Superior of her remaining submerged?

Answer. It would make her harder to raise, injure her frame and light work.

Cross-examined.

Question. You have said that in the event of an injury to the Superior near point A, the proper course would have been to run her on the flats most convenient to the place of the accident, and you have said the most convenient place was the spit or bar of Watson's island; when did you acquire the knowledge that this spit or bar of Watson's island was such most convenient place?

Answer. I have sounded all over that place. I ascertained the fact two years ago.

Question. Did you form the opinion you just now expressed from the information you acquired two years ago?

Answer. I form the opinion now from the information I acquired two years ago, and subsequently.

Question. Why did you not express this opinion on the trial of this cause in the U. S. district court when you were examined there?

Answer. I do not know. I presume I was not asked the question.

Question. Did you not there testify that the proper course to be pursued was to have run the Superior on the flat, as indicated by you at C, D, B?

Answer. I said she could have been run ashore at several places, but C, D, B, is where I would have taken her at that time.

Question. Why have you now changed your opinion as to the propriety of running her on the bar at Watson's island, instead of the flat at C, D, B?

Answer. I have not changed my opinion. I said first the nearest place would have been on Watson's Island bar; that was the nearest place; the second was on the flats C, D, B. It is nigher to Watson bar, but not better than C, D, B.

Question. Is it as good a place as C, D, B?

Answer. I would prefer C, D, B.

Question. Is the bar at Watson's island at all a proper place to have run her upon, under the circumstances of the accident?

Answer. Yes; she could have been run there. I should have preferred the other harbor.

Question. Might not other persons, equally well judging with yourself, have preferred Watson's island or the point E?

Answer. Certainly they might.

Question. What is the distance from the shore at the point C, D, B, at which the steamboat Superior, supposing her to draw seven and a half feet of water, would have touched the bottom at extreme low tide?

Answer. I suppose it would be 250 feet; as the water swelled, the boat rose, and they could drive her further up on the mud.

Question. With seven and a half feet of water in her hold would not her fires be put out?

Answer. Yes, certainly.

Question. How could she, then, have been forced by the power of her steam higher up the flat?

Answer. I do not know.

Question. You say you have sounded the Susquehanna all round in the neighborhood of this accident; be good enough to say whether the flat C, B, D, does not deepen gradually till it reaches the channel, and then descend rapidly into the channel?

Answer. When you get pretty well out into the channel it descends pretty rapidly. The channel at that point is only twelve feet deep.

Question. In extreme low tide what is the depth of water on the flat C, B, D, at the point where it begins to descend rapidly into the channel?

Answer. It does not descend rapidly, but moderately.

Question. Supposing the effect of the accident to the Superior, by running on a pile near point A, to have turned her head towards point E, so that from A to E would have been a straight course for her, whilst in order to go from point A to C, B, D, she would have had to round to, and supposing the effect of the accident to have been such that she would have sunk in five minutes from the time of its occurrence, would it not have been better to have gone to point E than to point C, D, B?

Answer. She would have sunk before she got anywhere, the time supposed being too short to reach any shore.

Question. How long would it have taken her, with a full head of steam, to go from A to E?

Answer. From 5 to 10 minutes; perhaps 8 or 9.

Question. I repeat the above question, varying the time from 5 to 8 or 9 minutes?

Answer. It would.

Question. (Supposing the steamboat to have reached the point E, and to have been made fast.)

[The witness here explains his answer to the next preceding question. The steamer might have gone to point E; but I am not prepared to say it is better. I don't think it would have been as well as to go to the flat C, B, D.

Question. Whether different well judging men, exercising a

sound judgment, and placed in the circumstances of the captain of the Superior at the moment of the alleged accident, might not have determined differently as to the eligibility of points E, and C, D, B, as a place of refuge for the steamer?

Answer. He has a right to his opinion, whether good or evil. I judge not his motives. There may be a difference of opinion on this subject, as upon every subject.]

Question resumed. Supposing the steamboat to have reached the point E, alongside of the wharf, and to have been made fast with four five-inch and two $3\frac{3}{4}$ inch new hawsers, and to have settled upon the bottom, and to have remained there for the space of one hour and a half unmoved, would you not have considered her safely made fast and not likely to move, supposing, also, that you had no knowledge that the bottom on which she settled was different from that which prevails generally in the Susquehanna river?

Answer. I would not have made her fast that way; I would have used all my chains first, and then all the rope afterwards.

Question. Supposing that instead of chains, you had used hawsers, and she had remained settled on the bottom for an hour and a half, would you not at the end of that time have considered her so fast as not likely to move?

Answer. I should be governed by the feeling of the ropes, and if I found they were straining, ready to break, I should not have at all felt satisfied that she was safe, and would have got out more fastenings, if I had them or could procure them.

Question. What is the usual mode of fastening a steamer like the Superior to her wharf; is it hawsers or chains?

Answer. I used to fasten mine with chains and ropes; steamers like the Superior are generally fastened with ropes.

Question. On reaching a wharf, is not a rope fastening the first thrown ashore and used?

Answer. Yes, sir.

Question. Is there not a difference between ropes and chains in their tension under strain, to the extent of making their bearing unequal?

Answer. There is.

Question. Is not the difference of tension so great as to render it practically impossible to make the bearing of all equal?

Answer. If they are all of the same strength, it is not.

Question. Are not chains which are appropriate as cables for the steamer Superior, stronger than 5-inch hawsers?

Answer. I should say they were; she ought to require a $\frac{7}{8}$ chain, which I suppose to be five times as strong as a five-inch hawser.

Direct Examination resumed.

Question. Do you mean to say that you believe that a person of

good judgment, in command of a vessel, situated as the Superior was at the time of the accident, near the point A, might as well have gone to the point E, as to the flats C, B, D?

Answer. No, sir; I think it was bad judgment.

Question. Supposing extreme low water at the time of the accident; would it have been practicable and safe for the Superior to have been moored on the flats C, B, D?

Answer. Yes, sir.

Question. What course might have been then pursued by the captain for protecting the vessel and saving her from further injury?

Answer. Pump the water out of her; find the leak inside; put canvass or some other material over it, and nail it down.

Question. Could she then have been put in a condition in which she could have been safely brought round to Baltimore?

Answer. Yes, sir.

Question. In the neighborhood of this wharf E, would it have been easy to procure additional rope or other fastenings for the Superior, after her accident?

Answer. I think they might have got some; does not know of any myself; there is always rope about in such places.

Question. Even when there has been no accident, do you consider it safe to fasten a boat like the Superior with ropes only, to the wharf, and so leave her?

Answer. If they have enough of them they might so secure her, but in a bleak place like her wharf I would prefer having some chain with it.

Question. Is there any abruptness in any part of the flat C, B, D, which could prevent a vessel from safely mooring there at any tide?

Answer. No, sir.

Cross-examination resumed.

Question. Do you mean to say that the difference in eligibility as a place of refuge, between points C, B, D, and point E, is so obvious to every sound judging mind, that no steamboat captain, under the emergency of such an accident as the Superior is said to have met with, could hesitate in his preference of C, B, D over E?

Answer. I should think not.

Question. Do you mean to say that this choice would have been made by such captain, irrespective of the position in which the steamer was made to head by the accident?

Answer. There would have been some doubt in that case; if she had been directly heading for E, the probability is, she would have kept on at high water, but not at extremely low tide.

Question. What is the ordinary rise of the tide in the Susquehanna river at that point?

Answer. The average, as shown by the railroad tide-table, is about five feet.

Question. If the steamer had been run upon the flat, she being then so full of water as to draw six feet water, would she not at high water have been entirely submerged?

Answer. No, sir.

Question. How much out of the water would she have been, and what part of her would have been out of the water?

Answer. All her hurricane-deck would have been out of water, if they did not pump her out.

Question. You state you would have fastened the Superior with chains, unless you supposed the ropes to have been strong enough, and this you would have done if there had been no accident; are not four five-inch hawsers and two 3¾ hawsers more than the usual fastening used for such a boat?

Answer. It depends upon where she is to be fastened. At the wharf E it would be sufficient.

ROBERT H. BARR.

Deposition of John H. Myers, witness for the Appellant, taken before the same Commissioner on the 3d day of April, 1857.

I reside at Havre de Grace; have resided there 38 years, all my life; I am a waterman; been engaged in that business about 15 years, both in steamboats and vessels; I am captain of the steamboat Gypsy now; I am familiar with the river about Havre de Grace.

Question. Suppose the steamer Superior, having left the wharf at the canal basin with a tow of 31 boats, had straightened out with the current, the current then running 2½ knots, had struck near the point A on Exhibit A, on her starboard side, about one-third from the tow, and was consequently making water very rapidly, what course would it have been proper for the captain of the Superior to pursue?

Answer. He should have run down to the flat C, B, D; he would have done it in less time, in consequence of having the tide with him; he would then just have made to the shore; the tide would have carried him down, and he would have been perfectly safe there; the bottom is very gradual, and of mud. In going where he did, he must have turned his boat round; the boat, having a great deal of water in her, must have turned very slowly; could not have made the time in which she would have done, going with the tide; where he ran the boat he had the tide to contend with; I think there was a rock there, and he must have lost some time in going where he did. I think he could have got his boat down to the flat C, B, D, by the time he got her around and heading cleverly up the stream. She could have run in at an ordinary tide. I don't know what the comparative depth of water between the flat

C, B, D and the wharf at E, having seldom stopped there, and not being familiar with it as I am with the point C, B, D. If she had been run in at low tide, I think they might probably have pumped her out. I have known vessels laid up there three months at a time; it is a safe place; had my own steamboat laid up there.

Question. Suppose the Superior, after the accident described to you, arrived at the wharf E, her bow inside the point of the wharf, her stern out, she rapidly filling with water, and both hawsers and iron chains and anchor chains on board; how would you have made her fast to secure her safety?

Answer. I would have got the chain out as soon as possible; after I got my chain out, I would have put my hawsers out, and everything that was necessary to hold the boat.

Question. Would you have considered it safe, under the circumstances, to dispense with use of chains entirely?

Answer. No, sir, I would not.

Question. Suppose the steamer Superior was struck near the point A, and filling so rapidly that there was reasonable apprehension she would sink in five minutes—is there any other point besides the flat C, B, D, to which she should have been taken in preference to point E?

Answer. I would have made an effort to get on Watson's Island bar in preference to point E, because the distance was shorter, and she could have been beached there with safety.

I knew the steamer Superior before the accident, and would not, for my own part, have given anything for the hull, only the iron I could get out of it; the only value that was in her was the machinery, copper, and iron—did not consider the hull worth anything. I thought her of so little value that I did not attend the sale, though requested to do so by a person who wanted to buy her.

Cross-examined.

Question. How long have you been in command of the Gypsy; what is her tonnage, and between what points does she ply?

Answer. I have commanded her one year; her tonnage 113; plies between Havre de Grace, Bell's Ferry, and Port Deposit.

Question. What was your previous command?

Answer. I commanded the steamer Independence before the Gypsy. She was a general tow-boat, towing from Havre de Grace to various points.

Question. When you express your preference for the flats at C, B, D, over E, is it not mainly upon the supposition that the Superior was heading downward, and had the current in her favor?

Answer. For that reason, and also because I consider it a safer place for the boat.

Question. You say that, at low water, the depth of water is six feet at the edge of the flat C, B, D, next to the channel, and that

the flat rises gradually for 200 yards to the shore—how far upon that flat could a steamboat drawing 7½ feet water, and nearly full of water, have forced her way at that state of the tide?

Answer. She could have run half her length on the flat.

Question. If she had run half her length on the flat at extreme low water, and being full of water, what would have been the consequence of a rise in the tide of five feet—would she not necessarily have slid into the channel?

Answer. Does not know whether she would or not; she might have gone back.

Question. Suppose a vessel coming down stream, with a current of 2½ knots an hour, hangs upon a rock one-third of her length from the bow, and two feet distant from the keel, would not the effect be that the current would sweep her stern down stream, and her head up?

Answer. I can't agree with you there. I think she will hang there, with the stern up stream and the bow down.

Question. You have spoken of the depth of water at point E; be good enough to say how near to the wharf the steamer Superior could have come at extreme low tide?

Answer. I have not spoken of the depth of water there, and am not sufficiently familiar with the locality to answer the question.

Question. You say, that upon approaching the wharf you would have used a chain, in preference to a rope, to have made her fast; please state how you would have got the chain ashore for that purpose?

Answer. I would have heaved a line on shore, and would have hauled in on the chain.

Question. What force of men would it require to haul through the mud a chain cable, of links of ⅜-inch iron, for a distance say of twenty yards from the boat to the wharf?

Answer. Five men ought to haul it easy enough.

Question. If you had not found five men on the wharf ready to haul it, would you have sent your own crew to do it, and how would you have sent them?

Answer. I would have lowered my boat, and sent the crew on shore to haul upon the chain.

Question. After the chain was made fast on shore, would not your crew have to return to the boat, to heave in the slack of the chain by the capstan?

Answer. Part of them would, if there had not been men enough left on board.

Question. What are the usual fastenings used by a boat when she first approaches a wharf, in her ordinary business?

Answer. They are ropes.

Question. Are they not always kept in readiness for that use?

Answer. Yes, sir; both chains and ropes.

Question. Are not the cables usually made fast to the anchor, and kept in readiness for that use, in the event of a necessity?

Answer. Yes, sir; the chain is ordinarily shackled to the anchor.

Question. You have stated in your examination that you consider the flat C, B, D, a safe place to winter vessels in, and you have known many to be so wintered; were they not always run upon the flat, when the tide was high enough to get them well in to shore?

Answer. Of course she goes in, in an ordinary tide to float her, so as to get her close to the wharf, under the lee of the wharf.

Question. Suppose the Superior had been beached at the bar of Watson's island, and had there sunk, would she have been safe in the event of a freshet in the river?

Answer. I think she would be safe at any time during summer or fall.

JOHN H. MYERS.

Deposition of Moses Galloway, witness for Appellant, taken before the same Commissioner, at the same time and place.

I am now captain of the steamboat Maryland, at the Susquehanna river, and have had charge of steamboats about five years, as captain, and have been living 17 years at Havre de Gaace, and part of the time acted as mate for Capt. Varden. I am familiarly acquainted with that part of the river opposite Havre de Grace.

Question. Suppose the steamer Superior, having left the wharf at the canal basin with a tow of 31 boats, had straightened out with the current, the current then running 2½ knots, had struck on the point A, in Exhibit A, on her starboard side, about third from the bow, and was consequently making water very rapidly, what course would it have been proper for the captain of the Superior to pursue?

Answer. My course, if I had no idea that she would go down immediately—that is, in ten minutes—I would have run her into the flat C, B, D; I think I could have done it in six minutes; the current running down at the rate stated would make it more favorable to run to flat C, B, D; or, if it had not been running down under any circumstances, I would have run to that place or Cecil flats, or Watson's Island bar; but I think at the same time, the current running at that rate, it would have been difficult to have got her on the island bar, because the current would have cut her below the bar; so I think either of the two places I named would be the better place. The Cecil flats are on the Cecil side, just below the railroad wharf.

Question. Why would you consider it more proper to have taken her to the flat C, B, D, or the flat on the Cecil side, rather than to the wharf at E?

Answer. The reason why I would have run her into the flat C, D, B, is, that it had a pretty and regular bottom, and the bottom at wharf E is irregular. The same reason I would give for taking her to the flats on the Cecil side this—the flats there are not so long as at C, B, D. On one occasion I ran the steamer Susquehanna on the flats C, B, D, and stopped a leak. When the tide fell from her she did not taughten a line, or move a bit; she laid there I think over a month. The tide had fallen from 8 to 10 inches when I ran her in; when I ran her in it was an ordinary tide. I think it a safe place to moor vessels. I have often seen them there, and is well known to those who navigate the river. The Superior could have run on those flats safely at any tide, and moored safely.

Question. Suppose an extremely low tide; would that change your opinion as to the course that should have been pursued by the captain of the Superior at the time of the accident?

Answer. No, sir, it would not, because the lower the tide the more desirable the flats C, D, B would be, then the place where she was run on. At a very low tide there is very little chance to get her in the dock at E; her bows would of course take up on the flats in the dock E, and her stern in deep water would cause her to slip off.

Question. Have you made any soundings of the flat C, D, B; if so, at what stage of the tide, and what was the result?

Answer. I have at mid-tide, and found it to go off gradual till we got into fifteen feet water.

Question. Supposing the case stated in the first question; how long would it necessarily take to round the vessel to, and work her to the wharf E?

Answer. It would be very hard for me to come to the length of time; but one thing I do know, I could have run her sooner into C, D, B, than the place she went to, because there was a current cutting her down, and she would have to turn to go back from where she came, which would take up more time than to run to C, D, B.

Question. Suppose the Superior after the accident described to you arrived at the wharf E, her bow inside the point of the wharf, her stern out, she rapidly filling with water, and both hawsers and iron chains and anchor-chains on board, how would you have made her fast to secure her safely?

Answer. I would have made fast with the first thing I could get hold of in the first place, then I should have put out, of course, all the ropes and chains I had aboard to keep her from sliding off.

Question. Would you have considered it safe, under the circumstances, to dispense with the use of chains entirely?

Answer. Certainly not.

2492

Cross-examined.

Question. Captain, how far was it from the point A to the Cecil flats?

Answer. I do not know the exact distance.

Question. Do you know the depth of water on the Cecil flats?

Answer. I think it would commence at 12 or fifteen feet, and run out gradually to nothing at mid-tide.

Question. What is the difference between mid-tide and extreme low tide in the river generally?

Answer. About four feet.

Question. Are there not portions of the Cecil flat that go off suddenly?

Answer. Down below the railroad wharf they go off suddenly. Immediately under the railroad wharf is the place where I would have moored her; this place may be 150 feet long, sufficient for a steamboat to lie there.

Question. Suppose from force of the current, or any other cause, the boat had missed striking this particular point under the railway wharf; would you then have put her on the flats above or below this wharf?

Answer. There is no place where she could be put. The 150 feet, I have above spoken of, is the width of the flat from the shore out, suitable for a steamboat to lie at. The flat may be 250 yards down the river.

Question. Suppose the effect of the accident to the Superior by running on a pile near point A to have turned her head towards point E, so that from A to E would have been a straight course for her, whilst in order to go from point A to C, B, D, she would have had to round to, and supposing the effect of the accident to have been such that she would have sunk in five minutes from the time of its occurrence; would it not have been better to have gone to point E than to point C, D, B?

Answer. I would not have run her to E under any circumstances.

Question. How long would it have taken her, with a full head of steam, to go from A to E?

Answer. It would be a hard thing for me to say how long against that current.

Question. Supposing the steamboat to have reached the point E alongside of the wharf, and to have been made fast, and to have settled upon the bottom, and to have remained there for the space of one hour and a half unmoved; would you not have considered her not likely to move, supposing also that you had no knowledge that the bottom on which she settled was different from that which prevails generally in the Susquehanna river?

Answer. Under these circumstances I should have considered her as not likely to move.

Answer. The reason why I would have run her into the flat C, D, B, is, that it had a pretty and regular bottom, and the bottom at wharf E is irregular. The same reason I would give for taking her to the flats on the Cecil side this—the flats there are not so long as at C, B, D. On one occasion I ran the steamer Susquehanna on the flats C, B, D, and stopped a leak. When the tide fell from her she did not taughten a line, or move a bit; she laid there I think over a month. The tide had fallen from 8 to 10 inches when I ran her in; when I ran her in it was an ordinary tide. I think it a safe place to moor vessels. I have often seen them there, and is well known to those who navigate the river. The Superior could have run on those flats safely at any tide, and moored safely.

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Answer. No, sir, it would not, because the lower the tide the more desirable the flats C, D, B would be, then the place where she was run on. At a very low tide there is very little chance to get her in the dock at E; her bows would of course take up on the flats in the dock E, and her stern in deep water would cause her to slip off.

Question. Have you made any soundings of the flat C, D, B; if so, at what stage of the tide, and what was the result?

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Question. Suppose the effect of the accident to the Superior by running on a pile near point A to have turned her head towards point E, so that from A to E would have been a straight course for her, whilst in order to go from point A to C, B, D, she would have had to round to, and supposing the effect of the accident to have been such that she would have sunk in five minutes from the time of its occurrence; would it not have been better to have gone to point E than to point C, D, B?

Answer. I would not have run her to E under any circumstances.

Question. How long would it have taken her, with a full head of steam, to go from A to E?

Answer. It would be a hard thing for me to say how long against that current.

Question. Supposing the steamboat to have reached the point E alongside of the wharf, and to have been made fast, and to have settled upon the bottom, and to have remained there for the space of one hour and a half unmoved; would you not have considered her not likely to move, supposing also that you had no knowledge that the bottom on which she settled was different from that which prevails generally in the Susquehanna river?

Answer. Under these circumstances I should have considered her as not likely to move.

Question. What distance have you sounded from shore the flat C, B, D, as spoken of in your examination in chief?

Answer. About 200 yards.

Question. If the steamer had been run at very low tide upon flat C, D, B, she being so full of water as to draw six feet water, would she not at high water have been entirely submerged?

Answer. I think she would.

Question. What is the distance from the shore at the point C, B, D, at which the steamboat Superior, supposing her to draw seven and a half feet of water, would have touched the bottom at extreme low tide?

Answer. You can make your calculation from the depth and the distance I have given you.

Question. Suppose this boat fastened with hawsers and remained settled in the bottom for an hour and a half, would you not at the end of that time consider her so fast as not likely to move.

Answer. I don't know but that I would.

Question. Is there not a difference between ropes and chains in their tension under strain, to the extent of making their bearing unequal?

Answer. I think there is.

Direct Examination resumed.

Question. If the Superior had been run on the flats C, B, D, could she have been pumped out and her leak repaired so that she could in safety be brought round to Baltimore?

Answer. There would be every chance on an extreme low tide to pump her out, and I think the leak might have been stopped, and if the leak could have been stopped temporarily she could have been brought to Baltimore safely.

I have not been on board the Superior since the accident.

Question. Supposing the state of circumstances mentioned in the first question put to you, and the captain had run the vessel for the Cecil flat, would there be any danger of his missing her?

Answer. No, sir; I don't think there would.

Question. What is the nature of the bottom of the flats C, D, B, and those on the Cecil side?

Answer. Soft bottom.

Question. If the Superior had been run on the flat C, B, D, when drawing seven feet water, and if, not having been pumped out, she had been submerged at high tide, would she have been carried off when the tide ran out?

Answer. I think not; am pretty certain she would not. The tide is about five hours in rising between high and low, and seven hours in falling from high to low.

Cross-Examination resumed.

Question. What is the difference between ordinary high and ordinary low tide?

Answer. I suppose it would run in the neighborhood of 3½ to 4 feet.

Question. What is the difference between extraordinary high and extraordinary low tide?

Answer. Eight feet. This is a thing I have to watch closely in getting the cars off and on the ferry-boat.

MOSES GALLOWAY.

Deposition of John S. Wilson, witness for Appellant, taken before the same Commissioner, at the same time and place.

Question. Suppose the steamer Superior, having left the wharf at the canal basin with a tow of 31 boats, had straightened out with the current, the current then running 2½ knots, had struck near the point A on Exhibit A, on her starboard side, about one-third from the bow, and was consequently making water very rapidly, what course would it have been proper for the captain of the Superior to pursue?

Answer. I would have went below the railroad pier C, B, D, because she was a heading that way, and could have gone there in half the time that she took in going to the place where she did go. It is very gradual there; she would have staid there if he had run her on that place, without any anchor fastenings or anything; it is soft bottom. I would have considered her safe there for any time; it is the best harbor in Havre de Grace in winter, or in any time; she could have run on there at any tide I have ever seen; she could have been pumped out and her leak repaired with safety; they would not have to had raised her had they run her there. I have known vessels laid up on that flat in winter, which is the very worst time.

Question. What is the depth of water at that place at extreme low tide?

Answer. Not less than six feet at the channel.

Question. State the nature of the rise of the bottom of that flat towards the shore.

Answer. In ordinary tide there is ten feet water; it is a very gradual rise for about two hundred yards to the shore.

Question. At low tides is any part of the flat C, B, D bare?

Answer. About 20 yards of it.

Question. When 20 yards of that flat C, B, D is bare, what would be the condition of the dock at E?

Answer. It is very shoal; after you get to the end of the wharf it comes up abruptly from 14 feet to 2 feet.

Question. At that stage of the water could the Superior have got into the dock at point E?

Answer. She could not; she might get the tip of her bow in, but her stern would be out in deep water.

Question. Why do you say it would take less time for the Su-

perior, under the circumstances I have described, after the accident to go to the flat C, B, D, than to the wharf at E?

Answer. Because her head was down, and the current was setting down the river; she would have to stem the current after her head was turned, and to go through more water; in the time it took to turn her round, she would have been within 300 yards of the flat C, B, D, the current cutting her down all the time.

Question. Did you see the Superior when she was taken up at the wharf E?

Answer. I did; after they got her on the flat E, inside of the dock, I saw them pump her out. I am 36 years old, and follow the water; have been following the water 17 years, and I am perfectly well acquainted with the river Susquehanna at Havre de Grace; have lived at Havre de Grace nine years; most every day I am on those flats, poling over it and sailing sometimes.

Question. Suppose the Superior, after the accident described to you, arrived at the wharf E, her bow inside the point of the wharf, her stern out, she rapidly filling with water, and both hawsers and iron chains and anchor-chains on board, how would you have made her fast to secure her safety?

Answer. I would have made her fast with the hawsers first, and put out the chains.

Question. Would you have considered it safe, under the circumstances, to dispense with the use of chains entirely?

Answer. No, sir.

Question. Suppose the steamer Superior was struck near the point A, and filling so rapidly that there was reasonable apprehension she would sink in five minutes; is there any other point besides the flat C, B, D, to which she should have been taken, in preference to the point E?

Answer. Watson's Island bar would be preferable to the point E, because she could have got there before she could get any water in her hardly.

Question. Could she have been beached there with safety?

Answer. I think she could.

Cross-examination.

Question. Have you ever commanded a steamboat?

Answer. Never had charge of one.

Question. What class of vessels have you commanded, and what class of vessel are you now in command of?

Answer. Has commanded a schooner of one hundred tons, and is now in command of an open boat, not decked, and under the tonnage law.

Question. In what trade is your boat engaged, and between what points do you principally trade?

Answer. In winter time I follow gunning, and does no freighting.

When I trade, I carry stone, lumber, fish, salt, anything I can get to carry. I trade from Havre de Grace to North East, about twelve miles.

JOHN S. WILSON.

Deposition of James C. Neilson, witness for Appellant, taken before the same Commissioner, at the same time and place.

I am a civil engineer and have been for about 21 years. The sight-piles were necessary for the construction of the bridge. If the terms auxiliary piles was used in the contract, then the sight or standard piles may be considered as coming within that designation. I consider the second sentence of the 9th paragraph to cover all piles whatever used in the construction of the bridge, by both engineer and contractors. Such is the usual meaning of such contracts.

I have been engaged as an engineer in the building of bridges.

Cross-examined.

Question. What is understood in engineering by the word sight-piles, and what use is made of them in building of bridges?

Answer. They are used exclusively for placing upon a platform built thereon the instruments of the engineer in charge of the work, the line of the work and other points involved in the construction of the bridge, and to facilitate his superintendence thereof.

Question. When you say these sight-piles were necessary for the construction of the bridge, do you mean to say that if the engineer in charge had resorted to other means of indicating to the contractor where and how he should perform his work, that these piles would still have been necessary in the construction of the bridge; or do you mean to say that these piles afforded only one mode among others within the choice of the engineer by which he could facilitate the discharge of his part of the duty?

Answer. I mean that it was the most convenient and accurate method for the engineer, but the bridge might have been built without them.

J. CRAWFORD NEILSON.

Deposition of A. Solomon, witness for appellant, taken before the same Commissioner, at the same time and place.

I made the map marked Exhibit B. All the soundings marked thereon in red figures were made by me. The soundings on the map indicate the soundings at mid-tide.

I made the map Exhibit C. The soundings thereon were made at mid-tide. The soundings on the map B are indicated at distances one hundred feet apart; those on C are at ten feet apart.

On the 11th of May, 1856, I was out in my garden at Havre de Grace, about 6 o'clock, which garden is in the line of the proposed

bridge, when my attention was drawn to the steamboat by the exceeding large tow, and, whilst I was looking at her, I saw something must have happened to her, as I saw her stop very suddenly. I saw the crew and Capt. Cropper running about giving orders; did not hear what they said, but heard voices, and was afraid the canal-boats would run on the steamboat. I was relieved from this anxiety, seeing the steamboat move slowly round back to the wharf of Williams and Hitchcock, at Havre de Grace, and perhaps in ten minutes afterwards I saw her sinking.

The whole time, from the time I first saw her stop, go back to the wharf, and there sinking, was not more than between 30 and 45 minutes.

Cross-examined.

Question. What was the purpose of the piles placed at a short distance from the line of the bridge, in groups of three, and for whose use were they put there?

Answer. The purpose was to facilitate the laying out of the piers by the engineer, and especially for his use.

Question. State the names of the engineers of the company in charge of the construction of the bridge, and state their respective duties.

Answer. E. Q. Sewell, chief engineer and superintendent of construction; C. H. Snow, principal assistant; David Parsons, first assistant; George Sewell, 2d assistant; and John Connor, the rod man.

Question. Were these officers on duty at the bridge during the course of the work that was done thereupon?

Answer. In regard to chief engineer, Mr. Sewell, he had to attend to other work, and was only general superintendent. He was there from time to time, as often as his other business allowed him. In regard to the others, they were upon duty, as far as I know. It was their duty to be there, and, as far as I know, they were there.

Question. Had either of the persons you have named the special duty of superintending the driving and cutting off of the piles in and about the bridge? if so, state who had that duty.

Answer. As far as I know, that duty devolved on David Parsons; I did not see his instructions, but I saw him in frequent attendance upon that duty. I myself was draughtsman in the corps of engineers, in laying out and constructing the bridge, and my duty was principally in the office, except when engaged in taking soundings.

Question. When was the work on the bridge discontinued, and the engineers discharged from further attendance upon that work?

Answer. In October the 9th, 1855.

Direct Examination resumed.

Question. Were not the sight-piles necessary and proper for the construction of the bridge?

Answer. Yes, sir, they are necessary.

Question. If the terms auxiliary piles are used in the contract, would the term sight-piles come under that designation?

Answer. Certainly, sir.

Cross-examination resumed.

Question. When you say that the sight-piles were necessary for the construction of the bridge, do you mean to say they were necessary for the engineers or the contractor?

Answer. For both.

Question. Do you mean to say that the bridge could not have been built without the aid of sight-piles, or do you mean to say that the use of sight-piles was the most convenient and proper mode of building the bridge?

Answer. According to my opinion it could have been built without them, but the use of them is the best and most convenient, and certainly the most accurate, because it gives the engineer a control over the contractor, and enables him to determine if the contractor is doing his work right, and enables the contractor, at the same time, to see if he is in the very line he ought to be.

R. A. SOLOMON.

Deposition of Littleton S. Cropper, witness for the Appellee, taken before John Hanan, esq., United States Commissioner for the district of Maryland, at the city of Baltimore, on the 2d day of April, 1857.

I am 45 years old, and was in command of the Superior, and am now in command of the Wyoming, in the service of the Philadelphia and Havre de Grace Steam Tow-boat Company, whose business consists in towing canal boats from Havre de Grace to Philadelphia. I was in command of the Superior, and on Sunday morning, the 11th of May, 1856, left the wharf at Havre de Grace, at canal basin, with a tow of thirty-one boats—a large tow, resulting from a previous interruption in the canal; on getting into the stream, having got the tow straightened out and fairly under way, came in contact with a hidden obstruction, a collision so violent as to alarm me for the safety of the boat. At the time I was standing by the wheel, and immediately went forward to ascertain from the engineer or hands whether she was making water, and although only going out of the pilot-house to the forward part of the promenade deck, discovered the engineer looking up with great evidence of apprehension of alarm. He exclaimed to me, "Captain, the water is already in the crank pit." I immediately ran aft, knowing there was no time for delay. From the sudden ingress of water,

ordered the canal boats to cast off. I stopped her before ordering the canal boats to cast off, which order, meaning the order to cast off, was obeyed with unusual alacrity.

I immediately took my ranges ashore, to ascertain what was the probable occasion of the shock; discovered I was over the range of the piles driven for the construction of the bridge at or near point A, marked on the Exhibit A.

I cast about in my mind on the instant where to run her ashore. I deemed the dock where I had wintered twice the most suitable place, being perfectly familiar with the character of the bottom, having carefully sounded it out, to ascertain that there was nothing to injure the bottom of the boat, in view of wintering there. Having decided on the instant, I got under way, ordered the engineer to shut off the outside injections, open both bilge injections, ordered the deck hands to the bilge pumps, rounded to, and run to the dock, and with a full head of steam forced her into the dock obliquely, that I might place her as near on level bottom as I could inside the end of the wharf, supposing that the bottom was even nearly the entire length of the boat on grounding her. I found, although the bottom inclination was very gradual, that she was inclined to recede. I forced her up the second and third time, held her there by going ahead on the engine, until I got a line out ahead to the wharf, ranging well up the dock, took turns on the capstan, hove taught on the head-line, ordered the boat to immediately run a line from the larboard quarter of the stern to the wharf immediately south, for the purpose of hauling her stern as far in the dock as she would go. I then had four parts of 5-inch hawsers got out forward to the several different ports ranging up the dock, within which time she had fairly settled on the bottom, the fires having been extinguished by the water, and her hull full of water.

She seemed to lie perfectly easy and immovable, evidencing no additional strain on the lines on settling on the bottom. I deemed her lying in a most favorable position for safety, and for the purpose of raising her. So far from apprehending any further damage, I ordered the men to clear up deck, and get their breakfasts.

She laid in that position at least one hour and a half, her deck entirely out of water, when she suddenly started back, parted the lines, and ran out into deep water, until the promenade deck aft was just above water, her night-heads forward just above water.

The occasion of her suddenly receding was, I believe, the soft character of the sub-strata of the bottom; the upper strata consisting of a tough mud and clay, through which having passed a pole, I found the sub-strata exceedingly soft, which no doubt yielded to the great weight of the boat's stern, being just inside the edge of the channel.

Question. Have you any reason to doubt, from knowledge which

you then had or have subsequently acquired, that in running your boat to the wharf at E, and in fastening her, as you have above described, was the proper course to be pursued under the circumstances; and do you think you would have bettered her condition of safety by running her to point C, D, B, or by fastening her at point E, with chains additional to the ropes, or chains without the ropes? State your reasons for your opinion.

Answer. To the first part, I would reply, not the remotest doubt. I am clearly of the opinion, after this lapse of time, and reviewing the whole ground, that I could not have acted more prudently or judiciously for the interest of all parties. It would have been impracticable to have got out a heavy chain without incurring the hazard of the exhaustion of steam, and her running out into deep water, for the obvious reason that a line would have had to have been run to the wharf, made fast to the chain on board, the crew transferred to the wharf, the chain (a long scope of chain) hauled to the wharf, made fast to the posts, the crew re-transferred to the boat in the yawl, passed around the capstan, and the slack taken in—a very tedious process. As to the propriety of running her to point C, B, D, in preference to point E, I would state, both points occurred to my mind at the instant, and I am satisfied I acted properly in deciding upon point E, being perfectly familiar also with the bottom at point C, D, B, having wintered there the winter previous. I knew that the approach to the flats at the then stage of the water would have been cut off by the sudden descent from the flats to the channel, which would have involved the risk of placing the Superior outside the range of wharves or piers in the thoroughfare of trade; consequently being subject to be run into, subjecting my owners to damage in such contingency.

Question. Have you, by any examination made since the accident, by the aid of the ranges you took at the time of the accident, and by the aid of your previous knowledge of the group of piles driven for the foundation of the bridge, and the piles driven a short distance therefrom, upon which a platform was erected for the engineers, been enabled to determine upon which set of piles your boat struck?

Answer. One or two days after the accident I employed a man to accompany me with his boat and gill-net, to ascertain the location of the cause of damage to the boat by my knowledge of the ranges; there being a little current, laid the net out immediately above where I judged the pile to be, and in less than five minutes hung the net to the pile, sounded it, and found at the then stage of the tide nine foot and a half water; from the top of the pile to the surface of the water alongside of the pile found, by measurement with a pole with the foot-marks on it, fifteen foot and a half depth of water. Immediately placed a buoy, with an anchor attached to it, at the pile, which buoy I had provided myself with,

disengaged the net, rowed to shore to ascertain the then stage of the tide; it was high water. I am clearly of the opinion that the pile was one of the cluster of sight-piles.

Question. Be good enough to state what was done after the accident to raise and repair the boat.

Answer. I immediately telegraphed to our president of the occurrence, and was advised on the next day by telegraph to meet him and a director at the cars at Havre de Grace, to proceed to Baltimore to get legal advice; while there, was instructed to seek out parties capable of raising the boat, searching being ineffectual, from the fact that the only competent parties were engaged in raising a sunken vessel down the bay. I so reported to the president, and he said he would procure parties in Philadelphia, in which he succeeded, I believe the same week. He instructed the parties in my presence in Philadelphia to use all despatch in preliminary arrangements, and immediately go to Havre de Grace to raise the boat, which orders were executed with all despatch. On arrival of the raising parties with their vessels and apparatus at Havre de Grace we procured all the men required, proceeded to draw her out by means of crabs ashore, with cables attached to the boat, with lighters alongside, spars across the Superior and resting on the barges, chains passed under the bottom of the Superior, and attached to the spars; by means of heaving on the chains, lifting the boat and heaving on purchases ashore, finally succeeded in drawing her out in the dock far enough at low water, by means of a large number of pumps and buckets, to free her of water so as to get to the leak, and stopped it by means of large sides of bacon, battered over the hole between timbers.

Question. Were the means you have described for stopping the leak the best which, in your opinion, could be adopted, and would it have been, in your opinion, prudent to have risked bringing her to Baltimore for complete repair? if not, state the grounds of that opinion.

Answer. To the first I would say, it was decidedly the best under the circumstances. To the second part of the interrogatory, I pointedly refused our company taking her to Baltimore, unless they acquitted me of all responsibility, not deeming her in a safe condition, being very much strained in her hull, as well as her engine, by the act of hauling her out, and the hole in her bottom being so large, and the remedy, from its nature, being temporary, although what I deemed the only remedy, yet such as not reliable to encounter the action of water and weather on the exposed route of the bay.

Question. What was the steamer's condition as to seaworthiness, fitting, and manning, at the time of the accident, and what was her value at that time?

Answer. She was staunch and in good repair, no expense being

spared the previous winter in rendering her equal to the business of the season; the instructions of our company invariably being to exercise an economical yet liberal discretion in repairs, insuring as far as practicable no interruption during the business season by repairs as to engine or hull. Her fitting out and manning was always upon the footing of safety to the boat and the trade. As to the value of the boat, I deemed ten thousand dollars a low estimate.

Cross-examined.

Question. Did you not say at the examination, when this case was tried in the U. S. district court, that after leaving the wharf at the canal basin with 31 boats in tow, that you stood up stream in consequence of the current; that you rounded out, and had straightened out with the current just before the accident, and do you say the same now?

Answer. I did, and I say so now.

Question. Did you not, on the same examination, say that the hole knocked into the Superior by the accident was on the starboard bow, about one-third of the way back, and about three feet from the keel, and do you say so now?

Answer. I did, and I say so now.

Question. How wide a space behind the Superior, at the time of the accident, was occupied by the tow of boats, and what was the course of those boats immediately after they were cast off?

Answer. About sixty feet; about fifteen feet wide each, and four abreast. They followed immediately in the track of the boat; they drifted down, shearing off laterally. The boats in tow were laden heavily, but their draught of water will not average over three feet each. The current of that day was two and a half knots.

Question. By what time after the occurrence of the accident did you reach the wharf at point E?

Answer. Not exceeding five minutes when I grounded her in the dock. I had two anchors and two chains on board; the size of the chain $\frac{3}{8}$ inch (iron) diameter.

Question. When you speak of parts of rope, do you not count, when a rope is put round a post and brought back to the vessel, that it is two parts?

Answer. Yes; it is generally made fast by a round turn on the post and brought back; this arrangement makes each part equal to a distinct rope. I do not think it occupied more than twenty minutes to secure the Superior at the wharf E. The Superior was actually brought round to Baltimore without any additional repairs being done to her hull.

LITTLETON S. CROPPER.

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LITTLETON S. CROPPER.

Deposition of A. P. Cropper, witness for the Appellee, taken before the same Commissioner, at the same time and place.

I am captain of the steamer Kingston, plying between Chesapeake City and Havre de Grace. I have been running on steamboats 22 years, and have been engaged in the particular service I am now engaged about 12 years. I did know the position of the sight-piles before they were cut below the water. I am 40 years old.

Question. Assuming that the position of the sight-piles, on the map now shown to you, is at or near point A, and that the steamer Superior had run upon one of those piles, and had knocked a hole in her botton so that she was in immediate danger of sinking, and that the effect of her collision with said piles was to cause her to head directly to point E, what do you the proper course for her commander to pursue—whether to go to point E, or to round to and go to the point C, D, B?

Answer. I should certainly run her back to point E, as being the nearest to the place where she struck, knowing the bottom much better than I did that below, having laid at point E one winter previous.

Question. Be good enough to describe the character of the flat at C, D, B, the depth of the water thereon at extreme low tide, and what the disadvantage of running the Superior thereon, as contrasted with point E.

Answer. In the first place you could not run her on there in extreme low water, the Superior drawing 5½ feet of water without any water in her. Having water in her, I would have judged it impracticable to run her to a place where I could not run on or beach her, knowing that there was not over three feet of water on the flat at extreme low tide. Sometimes this flat is entirely bare.

Question. Suppose in the event of an accident to the Superior, endangering her sinking, you had run her into her wharf at point E, and had there made her fast to the wharf-posts, with four five-inch hawsers and two 3¾-inch hawsers, all new, and she had filled and settled upon the bottom, and remained stationary for the space of one hour and a half, would you have considered her sufficiently secured, so as to be exempt from danger from further loss, by running back?

Answer. Yes, sir; I should consider her so, if the posts on the wharf were strong enough—knowing that rope is better to secure a boat in case of a surge, as it would give better than chains.

Question. Were you acquainted with the Superior, her strength and condition of seaworthiness, her fitting and manning? State what they were.

Answer. I was acquainted with the Superior. I consider her seaworthy, well manned, and fitted for the use she was employed in, having run her two or three trips; she performed very well.

Question. What was the value of the Superior at the time of the accident?

Answer. If I had the boat in the employ she was, I would not have taken ten thousand dollars for her.

Question. For what sum could she have been replaced?

(This question objected to by the counsel for the appellants.)

Answer. A boat to answer her purpose could not be bought for $15,000, as efficient as she was.

Cross-examined.

In the measure of ropes, a five-inch hawser is five inches in circumference; all ropes are so measured.

Question. What do you believe was the actual value of the Superior just before the happening of the accident, if offered in the market at public sale, with fair public notice?

Answer. I cannot give a correct answer; but I believe she was worth ten thousand dollars before the accident.

ABSALOM P. CROPPER.

Contract.

Articles of agreement, made and concluded this thirty-first day of May, eighteen hundred and fifty-four, by and between George Goss, Charles Hathaway, J. S. Cook, and H. B. Leach, of the first part, and the Philadelphia, Wilmington and Baltimore Railroad Company, by their president, Samuel M. Felton, party of the second part:

Whereas the said parties of the first part do hereby promise and agree, for and in consideration of the payments and covenants hereinafter mentioned, to be made and performed by said railroad company, to do, execute, and finish, on or before the first day of January, eighteen hundred and fifty-six, all the piling, timber, foundations, riprap, and masonry of all descriptions, for the bridge to be built on said railroad, across the Susquehanna river, at Havre de Grace, (the company to lay that portion of the masonry under water, where water is more than twenty feet deep; and the company reserving, further, the right to lay the work under water at not more than four piers, where the water may be less than twenty and not less than fifteen feet deep, if it shall hereafter appear for the interest of the R. R. company so to do,) in the best manner, to the satisfaction and acceptance of the president of said company, and of the engineer duly appointed to superintend the work on the part of the company, and (so far as they may be applicable) according to the following

Specifications.

1st. The piles to be driven in and about the foundations will be furnished by the company. They will be driven in sand and quick-

sand, (mostly the latter,) from ten to twenty feet, or until a hammer of 1,500 lbs., falling 25 feet, will not drive the pile more than two inches. The piles will be sawed off true and perfectly level, at such a depth as may be directed, and the portion sawed off disposed of as the engineer may direct. The work must conform exactly to such marks, guides, and directions as may have been furnished, and payment will not be made for any piles driven out of line, or that take a wrong direction in driving, or are sawed off irregularly. The piles shall be sharpened by the contractor, as may be directed, and shall be banded while driving, if the engineer shall require it. The contractor to furnish all labor, machinery, tools, scows or boats, &c., and all materials, except the piles themselves, which will be delivered afloat at Perryville or Havre de Grace. The price paid per pile to cover all costs and charges whatever.

2d. Riprap of rough stone will be spread over the bed of the river, around the different pieces of masonry, to such an extent and depth as the engineer may direct. The stone used for this purpose shall be a mixture of large and small fragments, of an average size of not less than two cubic feet. Care shall be taken in unloading them, to deposit them uniformly and evenly over the whole surface required to be covered. The riprap will be commenced around each piece of masonry as soon as the engineer may require; but, in general, a portion of it will be put in as soon as the masonry has been raised six feet from the bed of the river, and the remainder added, and the whole protection completed, as soon as that piece of masonry is finished. Riprap will be estimated by the perch of twenty-five cubic feet; the price per perch to cover all claims on account of it: Provided, however, that no work under water shall be required in placing, levelling, or packing the stone, when they have been well and carefully distributed in unloading from the boats; but such work under water, should any be necessary, will be done by the company.

3d. The masonry of the piers and abutments may be of three classes, either of which may be adopted, at the discretion of the engineer, in any part of the work. They will differ only in the character of the interior or backing of the walls, which, in first-class masonry, will be of hammered stone, in regular courses, corresponding with the face work. In second-class masonry, the backing will be laid after the manner of rubble work, except such dressing as may be necessary to give a good bearing and bond to the headers. In third-class masonry, the inside of the walls will be composed of concrete, of hydraulic cement, sand, gravel, and broken stone, thoroughly mixed, in such proportions as the engineer may approve, and carefully rammed in layers. Each course of stone and concrete to be entirely finished and levelled up before commencing the next. All masonry will be estimated by the perch of twenty-five cubic feet. The stone used in all the classes of masonry

will be of a quality equal to the stone from the best of the Port Deposite quarries, and such, in all respects, as the engineer shall approve. They will be laid in regular courses, not less than twelve nor more than thirty inches high; the beds to be of a width not less than one and a quarter times the height of the course, and in no case less than two feet—in the ice-breakers of the piers not less than three feet. In first-class masonry, the backing or interior of the work, as well as the front, will be required to conform to the above conditions; the courses being continued entirely through the wall, of uniform height; the inside stone to be of the same average size as those of the face, and the different stone of the same course to be so far fitted to each other as nowhere to leave spaces more than three inches wide, to be filled with mortar and small stone. The proportions of headers and stretchers, in all classes of work, will be such as the engineer may prescribe; the headers to extend entirely through all walls not more than six feet thick, and all the stone in the top course of all walls to be headers in each course to be over the stretchers in the course below, and to hold their size from the face back. In third-class masonry, every other stone will be a header.

4th. The beds, builds and joints to be hammer-dressed in the best and most workmanlike manner, perfectly true and straight, and to the entire satisfaction of the engineer or any person appointed by him. The vertical joints to be close for at least one foot back from the face of the wall. In first class masonry the beds and builds of each course to be hammered throughout, the backing as well as the face stone. The work of all classes will be rock face, (with the exception hereafter mentioned,) but the stone shall be neatly pitched off to draught lines, straight or curved, as the case may be, and the angles of the walls carried up with a neat arris; the rock face not to be left to project more than two inches beyond the plane of the working lines. It is expressly understood that the price paid per perch for each class of masonry includes the expense of all hammering of beds, builds and joints, and of the draught lines and arris corners. On the ice-breakers of the piers, sides of the draw-piers, and in such other places or courses as the engineer may direct, the face of the work also will be hammered; such hammered surface, on the face of the wall, will be proposed for at a price per square foot additional to the price per perch of the masonry.

5th. All classes of masonry will be laid solid in hydraulic cement, fresh ground and of the best quality, to be approved by the engineer or some person appointed by him. The cement will be mixed with clean, sharp sand, (which shall be washed and screened if required,) in such proportions as may be directed. The work, when required, shall be thoroughly grouted, instead of or in addition to laying in mortar. Where mortar or concrete is used under

water, it shall be lowered in tight boxes, and no faster than it is used. In general, all mortar shall be used as fast as made, and any portion that has been left standing more than six hours shall be removed entirely away and not put into the work. Where mortar is exposed to dry too rapidly in the wall, it shall be sprinkled with water from time to time, or otherwise protected from the sun. Care shall be taken to keep all dirt and bad material from the mortar and stone, and any dirt or rotten rock found on the stone shall be brushed, washed or pointed off. The stone shall, in all cases, be entirely dressed and cleaned before being taken upon the wall, and care shall be taken in every way not to move or disturb stone or concrete when once laid and settled in their place. All cut stone shall be chained by a lewis, and not by wrapping the chain around the stone. The joints in the face of all work shall be neatly pointed.

6th. Iron clamps or dowels shall be introduced into the work to secure the corners or coping stones of the piers and abutments, if the engineer shall so direct. They shall be made of the best Russia iron, of such size and form as may be prescribed, and the expense of them shall be included in the price per perch paid for the masonry.

7th. Each of the different classes of masonry will be bid for at three distinct prices: First, where materials only are furnished, the company laying the work; secondly, for work more than six inches below ordinary low water, to be done and completed by the contractor; thirdly, for work above water, (which will be reckoned from a line six inches below ordinary low water.)

8th. The railroad company will employ workmen and machinery to build and complete up to six inches below low water, all work of which the foundations are more than twenty feet below ordinary low water, at their own risk and expense, the contractor furnishing and delivering, on scows or boats, at the site of the pier, cut, rubble and broken stone, cement, sand, and all other materials whatever, as they may be required for the work. Such materials shall be at the risk of the contractor until used, and if any damage or delay is occasioned to the company's workmen by any neglect of the contractor in furnishing materials, or by the bad character of the material furnished, he shall be charged for such damage or detention such sum as to the engineer shall appear just and reasonable. Bidders will specify a price per perch for furnishing materials delivered afloat on the spot, for each of the three classes of masonry, which price will cover all charges on account of the part of the work built by the company.

9th. Where the water on the foundations does not exceed twenty feet in depth, the work under water will be done and completed in all respects by the contractor, either by building at the surface, on a timber platform, and lowering as the work progresses, or in any

other manner that may be approved by the engineer. The contractor to provide all necessary machinery and to furnish (and remove when done with) all scaffolding and piles that may be used while building. The greatest possible care will be required to guard the work (if lowered by screws) from being moved from its proper place and line by the current or otherwise, and to insure its finding a proper bearing on the foundations prepared for it. All work lowered will be at the contractor's risk until it has reached its foundation and the screws are removed. The timber platform on which the masonry is built and lowered shall be of such size, material and workmanship as the engineer may direct, and will be paid for by the company by the cubic foot of timber; all other charges whatsoever for such work being included in the price paid per perch.

10th. In case the engineer, or any person appointed by him to inspect the masonry, shall disapprove the workmanship or materials of any portion of it, such portion shall be immediately taken down and altered, or rebuilt to his satisfaction; and in case the contractor shall neglect or refuse to do so, the engineer shall have the right to employ other workmen to make the change required, and pay the expense out of any money that may have been due the contractor, or the engineer may, if he shall deem it expedient, suffer such work to stand, and deduct from the contract price for the same such sum as he may think a fair allowance to the railroad company for the inferior quality of the work, or it shall be competent for the engineer, in such case, to declare his contract null and void.

11th. The contractor shall not sublet or transfer this contract, or any portion of it, without the written consent of the engineer. Good discipline and order, as far as possible, shall be maintained on the work, and care shall be taken to avoid any unnecessary injury or annoyance to persons and property in the vicinity of the work.

All quarrelsome or intemperate persons shall be dismissed from the work—as shall any person whatever in the employ of the contractor whom the engineer may direct to be discharged. No spirituous liquors shall be furnished to the men employed, or allowed to be used on the work, or sold or kept in any tenement or boarding-house occupied by the contractor or his men.

12th. The engineer shall have the right to make any changes that he may think expedient in the location and grades, and in the quantities of the various kinds of work: provided, however, that if the changes are made after the bridge is let, whereby the cost of doing the work is increased, the contractor shall have such allowance therefor as the engineer may think just and reasonable.

13th. No claims for extra work will be allowed unless such work was expressly ordered to be done by the engineeer, nor in any case unless such claims shall be presented on or about the first of the month succeeding that in which the work was done, and such shall appear to the engineer to be just and reasonable.

14th. In case it shall appear to the engineer that the work of any contractor is not making progress sufficiently rapid to insure its being completed at the time specified in his contract, such contractor shall, on being notified of the fact in writing, immediately employ additional force upon the same to such an extent as the engineer may require; and in case any contractor shall refuse or neglect to do so, or persist in disregarding or violating any of the foregoing conditions and specifications, the engineer shall have authority to declare this contract null and void; and any payments that may have been due on a contract so annulled, shall be forfeited to the company.

Now this agreement witnesseth, that the party of the second part does hereby promise and agree to pay or cause to be paid to the said Geo. Goss, Charles Hathaway, J. S. Cook and H. B. Leach, for doing and finishing the work aforesaid, at the time aforesaid, and in all respects according to the specifications and conditions hereinbefore recited, at and after the rate of five dollars for each pile driven and cut off; forty cents for each cubic foot of timber used in foundations; two $\frac{25}{100}$ dollars for each perch of riprap; twenty-five cents for each square foot of hammered face of wall; seven $\frac{50}{100}$, six $\frac{50}{100}$, and six $\frac{50}{100}$ dollars per perch for material delivered for first, second, and third class masonry respectively; eleven $\frac{50}{100}$, ten $\frac{50}{100}$, and ten $\frac{50}{100}$ dollars per perch for first, second, and third class masonry respectively, when laid under water or lowered; ten, nine, and nine dollars per perch respectively for first, second, and third class masonary built above water. These prices to be paid, eighty-five per cent. in cash and fifteen per cent. in bonds of the company at par. On or about the tenth day of every month during the progress of the work, eighty (80) per cent. in cash of the contract prices will be paid for such quantities of the different classes of work as the engineer may estimate to have been done during the preceding month; and on the completion of the work and its acceptance by the president and the engineer aforesaid, the balance due according to the final estimate of the engineer (being five per cent. in cash, and fifteen per cent. in bonds) shall be paid in full. And the decision of the engineer, as to the quantity, quality and classifications of work, shall be final and conclusive, and binding to the parties to this agreement.

In witness whereof, we have hereto set our hands and seals, this thirty-first day of May, in the year eighteen hundred and fifty-four.

The words ("being five per ct. in cash and fifteen per ct. in bonds") interlined before signing.

E. Q. SENALLL, JR.

GEORGE GOSS, [SEAL.]
CHARLES HATHAWAY, [SEAL.]
JAREW R. COOK, [SEAL.]
H. B. LEACH. [SEAL.]
S. M. FELTON,
President.

Signed sealed and delivered in the presence of—
S. M. HENLING,
E. Q. SENALL, JR.

Attest: A. HORNER,
Secretary.

Agreement.

By Goss, Cook & Co. Proposition for settlement of Susquehanna Bridge Contract: is payable to them.

For work done on foundations (at contract prices) and otherwise, exclusive of stone or wood:

700 ph. ripraps put in, 2 25		1,575 00
35 yds. broken stone, 3 50		122 50
Piles driven and cut off, 651, 5 00		3,255 00
" " not " 333, 3 00		999 00
" pulled up, 116, 6 25		145 00
" furnished, 131, 5 00		655 00
Timber foundations, 12,776 cub. ft., 40 c		5,110 40
" for foundations delivered, 18 00 M., 17,308 ft.		311 54
Stone delivered to diving-bell in 1854		59 50
Timber retured R. R. Co. on change of contract		2,151 36
Sundry extra bills approved		1,603 40
		$15,987 70
Amount of tools and other property on board, as per inventory		20,089 72
Stone on board at prices fixed for monthly payments:		
3,934 perch cut stone, 6 50	25,521 00	
175 " face stone, quarried, not cut, 4 00	700 00	
4,750 perch rubble stone quarried, 2 50	11,875 00	
7,000 " riprap " " 1 75	12,250 00	
201 yards broken stone, 2 25	452 25	

276 square feet hammered face of stone, 25 c	69 00	
		50,867 25
To be added		30,000 00
		$116,944 67
Has been paid on drafts	$66,246 06	
Timber	2,736 24	
Sundries	1,512 20	
Paid		$70,494 50
Balance payable		$46,450 17

The above amount ($117,000) equals value of work done as estimated by O. R. C., E. Q. L. ($87,000,) plus whole costs, etc., ($20,000,) plus ($10,000) bonus.

E. Q. S., Jr.

It is agreed by and between the Philadelphia, Wilmington and Baltimore Railroad Company and Goss, Cook & Company, to compromise and terminate their contract for building the Susquehanna bridge, and turn over all their property, tools, &c., &c., employed on said work by the payment in the whole of one hundred nine thousand and five hundred dollars, including what has been heretofore paid them on account of said work; fifteen per cent. of said amount to be paid in the improvement bonds of said company—that is, fifteen per cent. of the said $109,500, and the balance in cash or notes, with interest, after deducting the payments already made and the said fifteen per cent. The above settlement is in full of all work done, and all claims of said Goss, Cook & Co. on account of said work, and all their rights to quarries, and all leases of other property to be transferred to said company, together with their tools, horses, implements, stock, &c., &c., on said work.

Philadelphia, Oct. 6, 1855.

S. M. FELTON, [seal.]
Pres't P., W. & B. R. R.
GOSS, COOK & CO. [seal.]

Witness:
Chas. P. Dare,
A. W. Decoster.

Agreement.

In Circuit Court U. S. for district of Maryland.

Philadelphia and Wilmington Railroad Co.
vs.
Philadelphia and Havre de Grace Tow-boat Co.
} In Admiralty, as appeal from district court.

It is admitted, in this case, that the libellants below are duly incorporated, under the law of the State of Pennsylvania, by the name stated in the libel, and that the respondents are also incorporated, under the laws of Maryland, Pennsylvania and Delaware, by the name stated in the libel.

It is also admitted, that the steamer Superior, at the time of the alleged injury, belonged to the libellants, and was regularly enrolled at the port of Philadelphia, and was duly licensed under the laws of the U. S. for the coasting trade; and that at the time of the alleged injury she was in the pursuit of her regular business, under such license.

And it was proved by Captain Taylor, that to him, in the towing business, the Superior would have been worth, before such alleged injury, from $8,000 to $10,000; and by Joseph Hankey, that he bought the Superior, and knew her before the alleged injury, and considers her worth before such alleged injury $10,000; also that he had paid for repairs $2,000; that he only put such repairs upon her as would do for a tow-boat, for which he was about to use her; that if he had repaired her joiner's work and painted her as she was before the accident, it would have cost him from 1,300 to 1,500 dollars additional.

It is agreed that this statement of the testimony of the two last named witnesses may be used at the hearing of the appeal, as though their depositions had been taken to that effect; the respondents not admitting by this admission the correctness of the valuation and estimate of said witnesses.

It is also admitted, that at the trial in the district court, proof was offered by the libellants that the furniture lost from said steamer, in consequence of her sinking and remaining under water, was worth $500. Proof was also given by the libellants that the bills incurred and paid by the libellants in raising the steamer amounted to $1,567 36; and proof was also given by the libellants that her net earnings for 60 days, being the period lost by being under water and undergoing the repairs which were made, would have been $1,890.

It is also admitted, that after the Superior was raised, the libellants gave notice to the respondents that she was raised, and offered to bring her to Baltimore for repairs, if the respondents would agree that the libellants should not incur additional risk by so doing, and that respondents declined so to agree.

It is also admitted that after such refusal the Superior was advertised for ten days in New York, Philadelphia, and Baltimore, for sale, at public auction, for whom it might concern; and that notice of such sale was given the respondents, and that at such sale she was sold for the sum (after deducting costs of sale) of $1,714.

And it is further admitted, that at the trial below, the respond-

ent gave in evidence by Captain Barrow, that said Barrow was a pilot on the Susquehanna river, and well acquainted with that river about Havre de Grace; that if he had had charge of the steamer Superior when she struck at the point marked A, on the map marked Exhibit A, and filed with the depositions taken by the appellant on this appeal, he would have put the vessel upon the flats at C, B, D, on said map, without doubt; that the steamer Susquehanna was for two months on those flats in perfect safety; that witness would have preferred to go upon those flats rather than to the wharf above, where the steamer did go, even if the flats had been double the distance, and that in his opinion it would take longer to turn than to get to the shore; that there was from two to four feet water on the flat when lowest; that the flats slope gradually out, but go down quite suddenly when they do go; they have soft bottom, and even at low tide the boat could run on them some three or four lengths of the boat; and it is agreed that this statement may be used on this appeal as though the deposition of Barron had been taken to the same effect.

It is admitted that the work of driving the piles of the proposed bridge at the Susquehanna was done by Messrs. Goss, Cook & Co., who signed a contract with the respondents, dated May 31st, 1854, for doing, executing, and finishing "all the piling, timber foundations, &c.," of the proposed bridge across the Susquehanna, at a stipulated compensation; that the sight-piles used by the engineers of the respondent were driven by one Frank Up, a foreman in the employment of said contractors, Goss, Cook & Company, by the direction of the engineers of the company, as were all the piles for the foundation of the bridge; and it is admitted that the paper marked Exhibit D D, and herewith filed, is a correct copy of the contract signed by Goss, Cook & Co., so far as the specifications are concerned, and it is agreed that the said Exhibit D D shall be used on the trial of the present appeal as evidence of the contents of the original contract, unless the original contract, which is supposed to be mislaid among the papers of the district court, is found before the trial of this appeal, in which case it is agreed that the original be used.

DOBBIN & TALBOTT,
Proctors for Libellants in the District Court, and Appellants in one of the Appeals to the Circuit Judge.
THO. DONALDSON,
Proctor for Appellant.

It is admitted that the building of the bridge was discontinued by the company, and the contractors discharged by mutual consent.

THO. DONALDSON,
For Appellant.
DOBBIN & TALBOTT,
For Libellants.

Decree.

In the Circuit Court, November term, 1857.

THE PHILADELPHIA, WILMINGTON and BALTIMORE RAILROAD COMPANY
vs.
THE PHILADELPHIA and HAVRE DE GRACE STEAM TOW-BOAT COMPANY.

Appeal from the District Court of the U. S. for Maryland district.

This cause coming on to be heard, the transcript of the record and proofs and other proceedings in this cause being seen, read and considered, and the agreements of the respective parties being heard, it is thereupon, this 14th day of November, A. D. 1857, by the authority of this court, adjudged, ordered and decreed, that the decree of the said district court, from which this appeal is taken, be, and the same is hereby, affirmed, with the costs of the district court and of this court.

R. B. TANEY.

From which said decree so as aforesaid passed, the said Philadelphia, Wilmington and Baltimore Railroad Company, by their proctors, in open court here, prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next, and to them it is granted.

Thereupon it is ordered by the court here, that the record and proceedings aforesaid, with all things relating to the same, be transmitted to the said Supreme Court, and the same are hereby transmitted accordingly.

Bond.

Know all men by these presents, that we, Enoch Pratt, Henry Janes and T. F. Tobey, all of the city of Baltimore and State of Maryland, are held and firmly bound unto the Philadelphia and Havre de Grace Tow-boat Company in the just and full sum of fourteen thousand dollars, lawful money of the United States, to be paid to the said Philadelphia and Havre de Grace Steam Tow-boat Company, its certain attorney, successors or assigns; to which payment well and truly to be made and done, we hereby bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this seventh day of December, in the year of our Lord one thousand eight hundred and fifty-seven.

Whereas, at a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore, on the first Tuesday in December, in the year of our Lord one thousand eight hundred and fifty-six, the said Philadelphia and Havre de Grace Steam Tow-boat Company, by the decree of the same court, recovered against the Philadelphia, Wilmington and Baltimore